

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

PLR-107976-22

Date:

September 26, 2022

Legend

X =

A =

B =

Agreement1 =

Agreement2 =

Date1 =

Date2 =

Date3 =

Date4 =

State =

Dear :

This letter responds to a letter dated April 12, 2022, submitted on behalf of X by its authorized representatives, requesting relief under § 1362(f) of the Internal Revenue Code (Code).

FACTS

According to the information submitted and representations within, X was incorporated under the laws of State on Date1. X filed an election under § 1362(a) of the Code to be treated as an S corporation effective Date1.

Prior to Date2, A was the sole shareholder of X. On Date2, pursuant to a stock purchase agreement, X issued shares of X stock to B such that A and B were equal shareholders of X. Also on Date2, A and B executed Agreement1. X represents that Agreement1 is a binding agreement relating to distribution and liquidation proceeds of X. The terms of Agreement1 permitted X to make distributions to A and B in a manner such that each outstanding share of X stock did not confer identical rights to distribution and liquidation proceeds during the time period between Date2 and Date3. As a result, Agreement1 created a second class of stock with the meaning of § 1361(b)(1)(D) and X's S corporation election terminated on Date2.

X requests relief pursuant to § 1362(f) due to its governing provisions creating more than one class of stock. X represents that upon discovery of its error, it promptly took remedial action. On Date4, A and B executed Agreement2 which supersedes Agreement1. X represents that no provision within Agreement2 causes X to be treated as having more than one class of stock for purposes of § 1361(b)(1)(D).

X represents that X and its shareholders have filed tax returns consistent with being an S corporation for all relevant periods. X further represents that the circumstances resulting in the termination of its S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make adjustments consistent with the treatment of X as an S corporation, as may be required by the Secretary.

LAW AND ANALYSIS

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not (A) have

more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2)), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Section 1.1361-1(l)(1) provides, in part, that a corporation is generally treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds.

Section 1.1361-1(l)(2)(i) provides that the determination of whether all outstanding shares of stock confer identical rights to distribution and liquidation proceeds is made based on the corporate charter, articles of incorporation, bylaws, applicable state laws, and binding agreements relating to distribution and liquidation proceeds (collectively, governing provisions).

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) and the regulations thereunder provide relief for an ineffective S corporation election (i.e., treating the ineffective election as effective) or inadvertent termination of an S corporation election provided the following conditions are met: (A) The corporation made an election under § 1362(a) that was ineffective or was terminated; (B) The Service determines that the circumstances resulting in the ineffectiveness or termination were inadvertent; (C) Steps were taken by the corporation to qualify it as a small business corporation within a reasonable period of time after discovery of the ineffectiveness or termination event; and (D) The corporation and all shareholders agree to any adjustments that the Service may require for the period.

CONCLUSION

Based on the facts submitted and representations made, we conclude that X's S corporation election terminated on Date2 because Agreement1 created a second class of stock. We further conclude that the circumstances resulting in the termination of X's S corporation election were inadvertent within the meaning of § 1362(f). Accordingly, pursuant to the provisions of § 1362(f), we rule that X will be treated as continuing to be an S corporation from Date2 and thereafter, provided that the S corporation election for X otherwise is valid and has not terminated under § 1362(d) for reasons not addressed in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled above, we express or imply no opinion as to the federal income tax consequences of the facts described above under any other provision of the Code, including whether X was otherwise a valid S corporation.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,

Jennifer N. Keeney
Senior Counsel, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure
Copy for § 6110 purposes

cc: